

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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SEN. TONY MUÑOZ
SEN. MATT MURPHY
SEN. IRA SILVERSTEIN
REP. GREG HARRIS
REP. LOU LANG
REP. DAVID R. LEITCH
REP. ANDRÉ THAPEDI
REP. MIKE TRYON

MINUTES

June 14, 2016

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, June 14 at 11:00 a.m. in Room 600C of the Michael A. Bilandic Building, Chicago IL. Co-Chair Harmon called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments to the JCAR office in writing.

ATTENDANCE ROLL CALL

Senator Bill Brady	X Representative Greg Harris
X Senator Don Harmon	X Representative Lou Lang
X Senator Karen McConaughay	X Representative David Leitch
X Senator Tony Muñoz	X Representative Ron Sandack
Senator Matt Murphy	X Representative André Thapedi
X Senator Ira Silverstein	Representative Mike Tryon

APPROVAL OF THE MINUTES OF THE MAY 10, 2016 MEETING

Senator Muñoz moved, seconded by Representative Harris, that the minutes of the May 10, 2016 meeting be approved. The motion passed unanimously.

REVIEW OF AGENCY RULEMAKINGS

Illinois Labor Relations Board – General Procedures (80 Ill. Adm. Code 1200; 40 Ill. Reg. 2414)

Representative Lang moved, seconded by Senator Silverstein, that JCAR, with the concurrence of the Illinois Labor Relations Board, extend consideration of this rulemaking for an additional 45 days. The motion passed unanimously (9-0-0).

Illinois Power Agency – Monitoring of Contracts Administered by the Illinois Power Agency (80 Ill. Adm. Code 1210; 39 Ill. Reg. 8710)

Senator McConaughay moved, seconded by Representative Sandack, that JCAR recommend that in the future, IPA be more timely when adopting rules required by statute. The statute requiring these rules became effective over 8 years ago. The motion passed unanimously (9-0-0).

AGENCY RESPONSES

Illinois Commerce Commission – Net Metering (83 Ill. Adm. Code 465; 39 Ill. Reg. 6134)

Department of Human Services – Permanent Supportive Housing & Bridge Subsidy Model for Persons with Mental Illnesses (59 Ill. Adm. Code 145; 39 Ill. Reg. 9704)

Due to the appropriateness of the agencies' responses, no further action was taken.

CONSIDERATION OF OTHER ISSUES

DCFS – Unsafe Sleep Deaths and Near Deaths – Complaint Review

Lise Spacopan, General Counsel, and Jeff Osowski, Administrative Rules Coordinator, represented the Department.

Co-Chair Harmon: JCAR received a public complaint from the DCFS Office of Inspector General (OIG) that DCFS was enforcing a policy not in rule relating to the investigation of certain child deaths.

Ms Spacopan: Confirmed that such a policy, which requires DCFS staff to investigate as deaths from neglect or abuse any potentially unsafe sleep related child death calls made to the Abuse and Neglect Hotline, is in force.

Co-Chair Harmon: JCAR's problem with the policy is not substantive but rather procedural: because it is not stated in rule, it has not been through the safeguards of the rulemaking process and is not accessible by JCAR or the public.

Ms Spacopan: The DCFS Abuse and Neglect Hotline receives around 200,000 calls per year, and it is not practical to put into rule all of the different factors that DCFS investigators must consider. Thus there is a lot of material in DCFS procedures that is not stated in rule.

Co-Chair Harmon: DCFS is enforcing a policy not contained in rule that impacts members of the public. The IAPA requires policies affecting persons outside an agency to be memorialized in rule, not only to ensure that the public had access to them but also to give the public and JCAR a chance to review them.

Ms Spacopan: It was outside of the OIG's authority to complain directly to JCAR.

Co-Chair Harmon: The public complaint process of JCAR does not preclude complaints coming from the OIG, and, since the complaint is before JCAR, JCAR must respond.

Representative Thapedi: If DCFS has the ability to memorialize a policy or a practice in memorandum form, why can it not do the same thing by drafting it in rule form or in statutory form?

Ms Spacopan: As a matter of principle, DCFS cannot be constrained by being forced to put into rule every policy and procedure that guides it in dealing with 200,000 calls a year.

Representative Thapedi: Observed that DCFS had the ability to put this material into rule but chooses not to do so.

Representative Lang: Questioned the propriety of DCFS starting out by accusing newly bereaved parents of death by neglect.

Ms Spacopan: Under its current rules, DCFS needs to pinpoint an allegation such as death by neglect before it can formally investigate.

Representative Lang: This problem could be fixed if the standards were incorporated in rule.

Ms Spacopan: There is no problem. The initial allegations will not be final unless they are proven. The investigation process can take anywhere from days to months and thus there is no problem in the initial allegations being applied so broadly.

Representative Lang: Under State law agencies are not allowed to have policy outside of rule, and this is precisely what DCFS is doing. This fact, not anything related to substance, is the major problem JCAR has with this agency policy.

Co-Chair Harmon: Where, for purposes of unsafe sleep, is "unsafe" defined. If this policy were put into rule, the first thing JCAR would insist upon is a definition of unsafe that would trigger child death investigations as possible abuse or neglect.

Ms Spacopan: DCFS staff, saddled with 200,000 calls per year, needs to have the flexibility and discretion, which they exercise appropriately every day, to determine whether there is neglect or abuse. These standards cannot be put into writing.

Representative Lang moved, seconded by Representative Thapedi, that JCAR object to DCFS implementing policy outside of rule, which is contrary to Sections 1-70 and 5-10 of the Illinois Administrative Procedure Act [5 ILCS 100] (IAPA). The agency has implemented a policy outside of rule for investigating certain child death and near death notifications to the Child Abuse and Neglect Hotline. DCFS says it is enforcing this policy under the mandate of Section 4.2 of the Abuse and Neglect Child Reporting Act [325 ILCS 5] to investigate the cause of death or serious life threatening injury to a child. However, nothing in that statute authorizes DCFS to establish policy for these investigations without first adopting that policy as rule under the IAPA.

OBJECTION ROLL CALL

A	Senator Bill Brady	Y	Representative Greg Harris
Y	Senator Don Harmon	Y	Representative Lou Lang
Y	Senator Karen McConnaughay	Y	Representative David Leitch
Y	Senator Tony Muñoz	Y	Representative Ron Sandack
A	Senator Matt Murphy	Y	Representative André Thapedi
*NP	Senator Ira Silverstein	A	Representative Mike Tryon

The motion passed 8-0-0. (*Not present for this vote.)

CERTIFICATION OF NO OBJECTION

Representative Leitch moved, seconded by Representative Thapedi, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or an Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued.

The motion passed unanimously (8-0-0), except that Representative Lang voted present on Tab 32 (Department of Human Services – Developmental Disabilities Services (Emergency) (89 Ill. Adm. Code 144; 40 Ill. Reg. 7855)) (7-0-1).

JULY MEETING DATE

Co-Chair Harmon announced that the next monthly meeting of JCAR is scheduled for 11:00 a.m. on Tuesday, July 12, in Room 600C of the Michael A. Bilandic Building in Chicago IL, unless legislative activity in Springfield requires it to be relocated there.

ADJOURNMENT

Representative Lang moved, seconded by Representative Harris, that the meeting stand adjourned. The motion passed unanimously.

Min:0616Jun